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(3)

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**

**CHHATTISGARH**

WRIT PETITION NO. 1894 OF 2003

**PETITIONER** : Sylvester Toppo
Aged about 60 years
S/o Late Simon Toppo
R/o Dharamjaigarh,
Distt. Raigarh (C.G.)

**VERSUS**

**RESPONDENTS** :

1. State of Chhattisgarh
Through : the Secretary,
Department of Law and
Legislative Affairs,
D.K.S. Bhawan, Raipur

2. District & Sessions Judge,
Raigarh (C.G.)

P. R. No. 1743/03
Presented by Shri U.N. Sharma
dated 25.06.03

RECEIVED COPY.
25/6/03
A.G. BILASPUR

**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS OR CERTIORARI AND MANDAMUS ETC. FOR FURTHER SUITABLE WRITS AND DIRECTIONS**

A.F.K.

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

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**Writ Petition No.3247 of 2003**

Chandra Prakash Sharma

- Versus -

State of Chhattisgarh and another

**Writ Petition No.1171 of 2003**

Prashant Kumar Thakur

- Versus -

State of Chhattisgarh and two others

**Writ Petition No.1600 of 2003**

Anil Kumar Tiwari

- Versus -

State of Chhattisgarh and another

**Writ Petition No.494 of 2003**

Gopal Krishna Beriwal

- Versus -

State of Chhattisgarh and another

**Writ Petition No.1894 of 2003**

Sylvester Toppo

- Versus -

State of Chhattisgarh and another

**Writ Petition No.510 of 2003**

Madan Lal Gupta

- Versus -

State of Chhattisgarh and two others

AND

**Writ Petition No.624 of 2003**

Rajkumar

- Versus -

State of Chhattisgarh and another

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**POST FOR ORDER ON 24TH MARCH, 2005**

Sd/-
L.C.BHADOO
Judge

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

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Present: -

| | |
|---|---|
| Mr. Y.C. Sharma, Advocate: | For the petitioners in W.P.Nos. 3247/2003 and 1171/2003. |
| Mr. Prashant Jayaswal, Sr. Advocate with Mr. Ali Asgar, Advocate: | For the petitioner in W.P.No.1600/2003. |
| Mr. Rahul Jha, Advocate: | For the petitioners in W.P.Nos.494/2003 and 1894/2003. |
| Mrs. Renu Kochar, Advocate: | For the petitioner in W.P.No.510/2003. |

None appears on behalf of the petitioner in W.P.No.624/2003.

Mr. Ravish Chandra Agrawal, A.G. with
Mr. Pramod Kumar Verma, Addl. A.G.
and Mr. Sumesh Bajaj, Dy. G.A.: For the State/respondents.

**ORDER**

(Passed on 24th March, 2005)

**L.C. BHADOO, J.**

1. By these writ petitions under Article 226/227 of the Constitution of India, the petitioners have questioned the legality and propriety of the orders to refuse renewal of their certificates to practice as Notary on the basis of Government order dated 31st December, 2002.

2. Brief facts leading to filing of these writ petitions are that the petitioners who are Advocates by profession practicing law in different parts of the State of Chhattisgarh were functioning as notaries public as they were appointed as such under the Notaries Act, 1952 (hereinafter referred to as 'the Act') by the erstwhile State of Madhya Pradesh. In the last, their renewal was refused by the State Government on the basis of its executive order dated 31st December, 2002, whereby looking to the number of Notary posts fixed for the State it has been decided that under Section 5 of the Act, the certificate to practice as Notary Public is to be renewed once in order to give chance to more number of Advocates to practice as Notary Public. However, if any certificate has been renewed prior to this date, will remain effective till the date of expiry.

3. As all these writ petitions involve same question of law, therefore, they are being disposed of by this common order.

4. Petitioner Chandra Prakash Sharma (W.P.No.3247/2003) was appointed as Notary Public vide order 2-1-1989 for Raipur Civil District, his certificate was

renewed from time to time, and lastly it was renewed up to 1-1-2001, thereafter, his application for renewal remained pending for two years. Petitioner Prashant Kumar Thakur (W.P.No.1171/2003) was appointed as Notary Public in the year 1993 for Kondagaon, District: Bastar, thereafter, his certificate was renewed from time to time, and lastly he applied for renewal on 8-8-2002, but the respondents refused to renew his certificate vide order dated 26-12-2002. Similarly, petitioner Anil Kumar Tiwari (W.P. No.1600/2003) was appointed as Notary Public for District: Bastar, which was renewed from time to time up to 21-7-2002, and lastly he applied for renewal vide Annexure P-4, but the same was rejected vide Annexure P-5. Petitioner Gopal Krishna Beriwal (W.P.No.494/2003) was appointed as Notary Public for District: Raigarh on 10-11-1978, thereafter his certified was renewed from time to time up to 9-11-2002, and he applied for renewal on 17-10-2002, which was refused on 10-1-2003. Petitioner Sylvester Toppo (W.P.No.1894/2003) was appointed as Notary Public in the year 1985 for Dharamjaigarh, District: Raigarh, thereafter, his certificate was renewed from time to time, and lastly it was refused on 26-5-2003. Petitioner Madan Lal Gupta (W.P.No.510/2003) was appointed as Notary Public on 30-5-1992 and his certificate was renewed from time to time up to 29-5-2001, thereafter, his renewal was refused by order dated 23-12-2002. Petitioner Rajkumar (W.P.No.624/2003) was appointed as Notary Public for Janjgir, District: Janjgir-Champa in the year 1985, his certificate was renewed from time to time, and lastly the renewal was refused by order dated 10-1-2003.

5. The question, which arises for consideration of this Court in these writ petitions, is that whether the State Government was entitled to issue order dated 31st December, 2002 under the amended provisions of sub-section (2) of Section 5 of the Act, whereby all the legal practitioners have been disentitled to renew their certificates after once.

6. Learned counsel for the petitioners argued, it is true that vide amending Act No.36 of 1999 the word 'shall' has been replaced by the word 'may' in sub-sections (1) & (2) of Section 5 of the Act. But this word 'may' does not give absolute right to the State Government to issue the impugned order taking a decision that after issuance of this order the certificate of Notary Public will be renewed only once and not thereafter so as to adjust more and more practicing lawyers by appointing them as Notary Public looking to the fixed number of posts available. The said decision is arbitrary, irrational and

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**amounts to fetter on the discretion of the State, and against the public interest. The law does not recognize fetter on the discretion.**

7. On the other hand, learned Advocate General argued that prior to the amendment in the year 1999, the word 'shall' was there in sub-sections (1) & (2) of Section 5 of the Act, therefore, the Central and State Governments had no authority to refuse to renew the certificate, but thereafter, the Central Government in its wisdom took a policy decision to increase the period of renewal from 3 years to 5 years, and also replaced the word 'may' in place of the word 'shall' in order to rationalize the procedure for renewal of the certificate of practice, and the State Government issued the impugned order that an Advocate once appointed as Notary Public became entitled to practice as Notary Public for ten years and that period was considered sufficient. Considering that period sufficient for an Advocate to practice as Notary Public, and in order to accommodate and give chance to more and more lawyers, order dated 31st December, 2002 was issued. This cannot in any way be termed as fetter on the discretion of the Government. He further argued that the said policy decision has reasonable nexus with the object of the Act. The State Government has taken a policy decision to classify a category of Advocates who become disentitled for renewal of certificate after practicing as Notary Public for ten years. For this view, he relied upon the decision of a Constitution Bench judgment of the Apex Court reported in **(1974) 1 SCC 534 (Shri Rama Sugar Industries Ltd. vs. State of Andhra Pradesh and others)**. Ultimately, learned Advocate General argued that the petitioners have not challenged the policy decision, therefore, on this ground also the petitioners petitions fail.

8. As far as the last submission made by learned Advocate General is concerned, perusal of W.P.No.3247/2003 reveals that the petitioner has questioned the legality and correctness of the impugned order dated 31-12-2002 on the ground of unreasonableness, and that it amounts to enmasse refusal. The refusal to renew the certificate of notary is arbitrary. In para 5.8 of W.P.No.3247/2003 it has also been mentioned that action of the State is wholly arbitrary and cannot be sustained in law. Therefore, in this writ petition, the policy decision has been challenge being arbitrary. Of course, in other petitions specifically this ground has not been raised, but to my mind, if it is held to be arbitrary, unjust and irrational in this writ petition, then it will apply to all cases.

9. In order to appreciate the arguments advanced by learned counsel for the parties, it would be profitable to have a look on the background of relevant provisions of the Act. As per the original Act, in sub-sections (1) & (2) of Section 5 the word 'shall' was there which has been replaced by the word 'may' vide amending Act No.36 of 1999. A comparative table of un-amended and amended provisions of the Act would show the correct picture.

a/ **In sub-section (1) of Section 5**

| Old | New |
|---|---|
| Every notary who intends to practice as such **shall** on payment to the Government appointing him of the prescribed fee, if any, be entitled - | Every notary who intends to practice as such **may**, on payment to the Government appointing him of the prescribed fee, if any, be entitled - |

b/ **In Section 5 (1) (b)**

| Old | New |
|---|---|
| To a certificate authorizing him to practice for a period of **three years** from the date on which the certificate issued to him. | To a certificate authorizing him to practice for a period of **five years** from the date on which the certificate issued to him. |

c/ **Sub-Section (2) substituted**

| Old | New |
|---|---|
| Every such notary who wishes to continue to practice after the expiry of the period for which his certificate of practice has been issued under this section **shall** on application made to the Government appointing him and payment the prescribed fee, if any, **be entitled** to have his certificate of practice renewed for three years at a time. | The Government appointing the notary, **may**, on receipt of an application and the prescribed fee **renew** the certificate of practice of any notary for a period of **five** years at a time. |

10. Section 2 (c) of the Act defines, "legal practitioner" means an advocate entered in any roll under the provisions of the Advocates Act, 1961. Section 2 (d) defines' "notary" means a person appointed as such under this Act. Section 3 envisages that, "the Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed". Section 4 deals with the maintenance of registers by the Central and State Government,

and to make relevant entries as envisaged in the Act about the person who has been appointed as Notary Public.

11. Section 5 of the Act envisages "Entry of names in the Register and issue or renewal of certificates of practice". Under the un-amended provisions the appointment was for three years and after the amendment it has been extended to five years and renewal is also for five years. After the amendment particularly in sub-section (2), significant change has been inserted. In the old Section there was a mandate that "under this section **shall** on application to be made to the Government appointing him and payment the prescribed fee, if any, **be entitled** to have his certificate of practice renewed", whereas, as per the new Section, "the Government appointing the notary, **may**, on receipt of an application and the prescribed fee **renew** the certificate of practice of any notary for a period of five years at a time" has been incorporated. By deleting the words 'shall' and 'be entitled', they have been replaced by the words 'may' and 'renew'. Therefore, automatic renewal and entitlement have been taken away by the amended Act No.36 of 1999.

12. Section 6 of the Act envisages "Annual publication of lists of notaries". Section 7 envisages about the "Seal of notaries". Section 8 envisages about the "Functions of notaries". Section 9 envisages "Bar of practice without certificate". Further, Section 10 envisages "Removal of names from Register" on the grounds (a) to (f) mentioned in the Section i.e. on the request of such person; or has not paid any prescribed fee required to be paid by him; or is an un-discharged insolvent; or has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practice as a notary; or is convicted by any court for an offence involving moral turpitude; or does not get his certificate of practice renewed. Therefore, these are the grounds enumerated in Section 10 regarding removal of names of notary from the register. Section 14 is regarding "Reciprocal arrangements for recognition of notarial acts done by foreign notaries". Section 15 is about "Power to make rules".

13. Whereas, Rule 3 of the Notaries Rules, 1956 (hereinafter referred to as 'the Rules'), is about "Qualifications for appointment as a notary", in which it has been mentioned that a person to become notary must have at least practice of 10 years; or in the case of Scheduled Castes/Scheduled Tribes or women seven years; or is a member of the Indian Legal Service; or at least

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ten years as a member of Judicial Service; or held an office under the Central Government or a State Government requiring special knowledge of law after enrolment as an advocate or held an office in the department of Judge, Advocate General or in the legal department of the armed forces. Rule 4 of the Rules envisages about "Application for appointment as a notary". Rule 6 envisages about "Preliminary action on application" that the competent authority shall examine every application received by him and he is also entitled to reject the application within six months if the applicant does not possess the qualifications. Further Sub-rule (2) (b) of Rule 6 envisages that the competent authority may ascertain from any Bar Council, Bar Association about the applicant and the objections, if any, to the appointment of the applicant as notary, to be submitted within the time fixed for the purpose. Rule 7 envisages "Recommendation by the competent authority". As per Rule 8 (1), on receipt of the report of the competent authority, the appropriate Government shall consider the report and then allow the application. Thereafter, sub-rule (3) of Rule 8 envisages about review, if the application is rejected. Sub-rule (4A) of Rule 8 envisages the numbers of posts of notaries to be fixed as per the Schedule for every State. Rule 8A is about "Extension of area of practice". Rule 9 is regarding "Fees for issue and renewal of certificate of practice and extension of area". Rule 10 is about the fees to be charged on various functions to be performed by the notary. Again Rule 12 is about "Seal of notary". Rule 13 envisages about "Inquiry into the allegations of professional or other misconduct of a notary".

14. Therefore, a scheme has been framed under the Act and the Rules. A glance on the above provisions shows about eligibility of a person to become Notary Public, procedure for appointment of Notary Public, renewal of certificate as well as the area for which he is to be appointed as notary. Section 10 of the Act envisages about removal of notary, how he is to be removed. Under the Rules, Rule 13 envisages about inquiry against the misconduct of a notary.

15. Similar order regarding renewal of notary was passed by the State of Kerala when the un-amended Act was in existence, which came to be challenged before the Kerala High Court in the matter of **A. Gourisankar v. The State of Kerala** reported in **AIR 1991 Kerala 225**, and the matter came up before the Division Bench of Kerala High Court also in the matter of **State of Kerala and etc. etc., v. K.U. Narayana Poduval and etc. etc.**, reported in

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**AIR 1992 Kerala 152**. The learned single Judge in the case of **A. Gourisankar** (supra) held that restricting the practice to maximum six years i.e. two terms is arbitrary and against public policy. It will be manifestly against public interest if one who has accumulated experience of six years is scuttled merely for giving new job opportunity to others. A notary public, once registered as such is entitled to automatic renewal on making an application and payment of fee. The State Government is a functionary of limited power under the scheme of the Act. The exercise of its powers is conditioned by the statutory provisions. The Division Bench in the case of **State of Kerala** (supra) held that in view of the word 'shall' in Section 5 (2) of the Act, the State Government has no discretionary power vested in it as the Act contains provisions for removal under Section 10, and the Rules also make provisions for inquiry to be conducted at the time of renewal. It is held that so far as the right of renewal is concerned, it is for the Legislature to make appropriate provisions whether there should be a discretion vested in the authority concerned or there should be no discretion. Once a policy is taken by the express provisions of the Act, as in the present case, it will be difficult to say that there is any power in the Government to pass an administrative order or to make a rule contrary to the provisions of the Act. It was held that the provisions of Section 5 (2) are mandatory and the right of renewal is automatic. The Court relied upon the decision of the Calcutta High Court in the matter of **J.J. Lahiri v. State, AIR 1985 Cal 140**, in which the Calcutta High Court held that a person who is otherwise qualified to be appointed as a Notary has a legal right to get his licence renewed and he cannot be disqualified on his attaining the age of 70 years. Such a disqualification, the learned single Judge held, can be made only by legislation and not by any executive order. The Government has no power under Article 162 of the Constitution of India to take any policy decision to introduce such disqualification in view of the express provisions in the Act and the Rules.

16. Now, we have to examine in the light of the above history of the legislation that what is the impact of substitution of the word 'may' instead of the word 'shall', whether the order impugned issued by the State Government is based on reasonable nexus/rational with the object and scheme of the Act, or whether the said action of the State Government amounts to fetter on its discretion. In the matter of **Shri Rama** (supra), the Constitution Bench of the Apex Court was required to consider the provisions of sub-section (3) of Section 21 of the Andhra Pradesh Sugarcane (Regulation of Supply and

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Purchase) Act, 1961. As per the provisions of Section 21 (3) the Government was entitled to exempt from the payment of tax any new factory for a period of three years and any factory which, in the opinion of the Government, has substantially expanded, to the extent of such expansion, for a period not exceeding two years from the date of completion of the expansion. The State Government exempted only newly constructed co-operative sugar factories and that was challenged before the High Court by the newly constructed sugar factories other than co-operative factories. The High Court rejected the objection and when the matter came up before the Constitution Bench of the Apex Court, the majority view held that "*Co-operative sugar factories consisting of sugarcane growers fall under a distinct category different from other categories. Sugarcane growers have been the object of particular consideration and care of the Legislature. The Government are justified in treating the sugar factories consisting of sugarcane growers as a distinct category*", and thereby exempting them from payment of tax. Initially, the State of Andhra Pradesh has properly exercised the discretion conferred on it by the statute. However, a dissenting judgment was given by two Judges (Mathew and Bhagwati, JJ) dissenting from the majority judgment and quashed the Government order finding the same as arbitrary and directed to consider the petitioner's case on merits and pass appropriate order in each case without taking into account the policy decision.

17. The Apex Court based on the arguments advanced by learned counsel for the parties, referred to *S.A. de Smith's Judicial Review of Administrative Action (2nd Edition)* wherein it is observed as follows: -

> "A tribunal entrusted with a discretion must not, by the adoption of a general rule of policy, disable itself from exercising its discretion in individual cases...
>
> ...But the rule that it formulates must not be based on considerations extraneous to those contemplated by the enabling Act; otherwise it has exercised its discretion invalidly by taking irrelevant considerations into account. Again, a factor that may properly be taken into account in exercising a discretion may become an unlawful fetter upon discretion if it is elevated to the status of a general rule that results in the pursuit of consistency at the expense of the merits of individual cases. ... **A fortiori**, the authority must not predetermine the issue, as by resolving to refuse all applications or all applications of a certain class or all applications except those of a certain class and then proceeding to refuse an application before it in pursuance of such a resolution..."
>
> (Emphasis supplied)

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18. The Apex Court also referred to *Padfield v. Minster of Agriculture, (1968) 1 All ER 694* in which it was held that the refusal of the Minister to exercise the power vested in him was considered as frustrating the object of the statute which conferred the discretion and that is why a direction was issued to the Minister to consider the appellants' complaint according to law. The Court referred to the said decision observing that we have already discussed the background and the purpose of the Act under consideration and are unable to hold that in refusing to grant exemption in these cases the State of Andhra Pradesh was acting so as to frustrate the purpose of the Act.

19. However, the Apex Court distinguished the judgment in *Rex v. London County Council, (1918) 1 KB 68* and held that the same is distinguishable on the facts of the case. The policy behind the Act there under consideration was obviously to permit sale of any article or distribution of bills or like things and in deciding that no permission would be granted at all the London County Council was rightly held not to have properly exercised the discretion vested in it. The Apex Court relied on *R. v. Port of London Authority, (1919) 1 KB 176, 184*, in which it was held that

> "There are on the one hand cases where a tribunal in the honest exercise of its discretion has adopted a policy, and, without refusing to hear an applicant, intimates to him what its policy is, and that after hearing him it will in accordance with its policy decide against him, **unless there is something exceptional in his case** ..... if the policy has been adopted for reasons which the tribunal may legitimately entertain, no objection could be taken to such a course. On the other hand there are cases where a tribunal has passed a rule, or come to a determination, not to hear any application of a particular character by whomsoever made. There is a wide distinction to be drawn between these two classes."
>
> (Emphasis supplied)

20. The Apex Court also relied on *British Oxygen v. Minister of Technology, (1970) 3 All ER 165*, holding that the House of Lords was in that case considering the provisions of the Industrial Development Act, 1966. The Act provided for the Board of Trade making to any person a grant towards approved capital expenditure incurred by that person in providing new machinery or plant for carrying on a qualifying industrial process in the course of the business. After stating that the Board was intended to have a discretion and after examining the provisions of the Act the House of Lords came to the conclusion that the Board was not bound to pay grants to all

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who are eligible nor did the provisions give any right to any person get a grant. After quoting the passage from the decision in *R. v. Port of London Authority*, already referred to, Lord Reid went on to state:

> "But the circumstances in which discretions are exercised vary enormously and that passage cannot be applied literally in every case. The general rule is that anyone who has to exercise a statutory discretion must not 'shut (his) ears to the application' (to quote from Bankes, L.J.). I do not think that there is any great difference between a policy and a rule. There may be cases where an officer or authority ought to listen to a substantial argument reasonably presented urging a change of policy. What the authority must not do is to refuse to listen at all. But a Ministry or large authority may have had to deal already with a multitude of similar applications and then they will almost certainly have evolved a policy so precise that it could well be called a rule. There can be no objection to that provided the authority is always willing to listen to anyone with something new to say---of course I do not mean to say that there need be an oral hearing. In the present case the Minister's officers have carefully considered all that the appellants have had to say and I have no doubt that they will continue to do so. The Minister might at any time change his mind and therefore I think that the appellants are entitled to have a decision whether these cylinders are eligible for grant."
>
> (Emphasis supplied)

Viscount Dilhorne again after referred to the passage in *R. v. Port of London Authority*, said:

> "Bankes, L.J. clearly meant that in the latter case there is a refusal to exercise the discretion entrusted to the authority or tribunal but the distinction between a policy decision and a rule may not be easy to draw. In this case it was not challenged that it was within the power of the Board to adopt a policy not to make a grant in respect of such an item. That policy might equally well be described as a rule. It was both reasonable and right that the Board should make known to those interested the policy that it was going to follow. By doing so fruitless applications involving expense and expenditure of time might be avoided. The Board says that it has not refused to consider any application. It considered the appellants'. In these circumstances it is not necessary to decide in this case whether, if it had refused to consider an application on the ground that it related to an item costing less than £25, it would have acted wrongly.
>
> I must confess that I feel some doubt whether the words used by Bankes, L.J., in the passage cited above are really applicable to a case of this kind. It seems somewhat pointless and a waste of time that the Board should have to consider applications which are bound as a result of its policy decision to fail. Representations could of course be made that the policy should be changed."
>
> (Emphasis supplied)

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21. The Apex Court further relied on *Halsbury* (Vol.1, 4th Edn. para 33 at page 35) in which it was held that:

> "A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interest, hence it must be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment. These propositions, evolved mainly in the context of licensing and other regulatory powers, have been applied to other situations, for example, the award of discretionary investment grants and the allocation of pupils to different classes of schools. The amplitude of a discretionary power may, however, be so wide that the competent authority may be impliedly entitled to adopt a fixed rule never to exercise its discretion in favour of a particular class of persons; and such a power may be expressly conferred by statute."

(Emphasis supplied)

22. If we look into the above decisions referred and relied upon by the Apex Court in the matter of **Shri Rama** (supra), while considering the fact whether in a particular matter the Government has fettered its discretion while exercising the power under a particular law or not, the Court is required to interpret and decide that how the power vested in the authority has been exercised by taking into consideration the whole background of the Act and purpose behind it, and also while exercising the discretion a tribunal must not, by the adoption of a general rule or policy, disable itself from exercising its discretion in individual cases. The rule that it formulates must not be based on considerations extraneous to those contemplated by the enabling act; otherwise it has exercised its discretion invariably by taking irrelevant consideration into account. The authority must not pre-determine the issue, as by resolving to refuse all applications or **all applications of a certain class** or applications except those of a certain class, and then proceeding to refuse an application before it in pursuance of such a decision. There are on the one hand cases where the tribunal in the honest exercise of its discretion has adopted a policy, and, without refusing to hear an applicant, intimates to him what its policy is, and that after hearing him it will in accordance with its policy decide against him, **unless there is something exceptional in his case**. As Lord Reid observed, the

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general rule is that anyone who has to exercise a statutory discretion must not 'shut (his) ears to the application' (to quote from Bankes, L.J.). As per Halsbury, a public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests.

23. On the above principles, if we examine the present case with the background and objects of the Act and the Rules framed thereunder, which prescribe eligibility criteria, procedure for appointment of Notary Public, removal and also inquiry about the misconduct under Rule 13 of the Rules, the purpose behind the Act was to appoint notaries for various functions to be exercised by them enumerated in Section 8 of the Act. The learned single Judge of the Kerala High Court in the matter of **A. Gourisankar** (supra) mentioned the background of the post of public notary. After the order of the learned single Judge of the Kerala High Court, the Division Bench judgment of Kerala High Court, and the Single Bench judgment of the Calcutta High Court, in the year 1992, a committee was constituted with a view to study all aspects relating to appointment of notaries and other matters relating to the administration of the Act. The said committee after making in-depth study of the Act and the Rules made thereunder submitted its recommendations on 30-9-1994. The objects and reasons of the amending Act No.36 of 1999 were brought among others with a view to rationalize the procedure for renewal of certificate of practice of Notary Public. In Section 5 (1) (b) of the Act, in place of 'three years', 'five years' was replaced, thereby the period of certificate was increased from three years to five years. In sub-section (2) of Section 5 of the Act in place of the word 'shall', the word 'may' was replaced, and in the old Act, the words 'be entitled' were removed and the word 'renew' the certificate of practice of any Notary Public for a period of five years at a time was added; thereby the Government was given discretion in the matter of renewal of the certificate of practice as per the amended Act. As per the judgment of Kerala and Calcutta High Courts, earlier before amending the provisions of Section 5 of the Act, there was no discretion with the Government and the Government was bound to renew the certificate on application being made

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by the concerned Notary Public. Therefore, by amending these provisions, the Government was vested with the power to exercise its discretion for renewal and also to overcome the difficulty that earlier the Government was bound to renew the certificate on an application by the Notary Public.

24. In the light of the above objects and background of the Act, and in the light of the above decisions referred, now we have to examine as to whether by order dated 31-12-2002 passed by the Government of Chhattisgarh, which is said to be a policy decision of the Government not to renew the certificate more than once, the Government has not disabled itself from exercising the discretion as per the amending Act, in other words, whether the Government has put fetter on its discretion by the impugned order dated 31-12-2002. If we look into the amended provisions of Section 5 (2) of the Act, the Central Government has simply amended the provisions in order to rationalize the procedure for renewal of the certificate of practice as Notary Public. The purpose behind it was to consider the case of each notary individually, whether his certificate is to be renewed or not. It was not the intention of the Legislature to introduce any policy or rule to completely bar a particular category of lawyers from getting their certificate renewed. The purpose behind the said amendment of the Act was that the Government while considering the renewal of certificate of notary is required to consider the case of each individual and find out whether on merits, particular person is entitled for renewal of the certificate or he has disentitled himself for renewal of the certificate by his acts or deeds during the period when he was practicing as Notary Public, for example, on account of complaints against a Notary Public regarding his conduct or a particular Notary Public was not adhering the rules and guidelines issued by the Government or he has conducted himself in such a way which disentitles him from renewal of the certificate or on account of any other disability the particular Notary is not able to discharge his functions. Therefore, the purpose behind this Act was to consider each individual case for renewal of the certificate of Notary Public. Even after incorporating the amendment nothing was indicated in the Act or the Rules that by any executive order the State will be entitled to debar all the Notaries from renewal of their certificates.

25. It is true that the provisions of removal and inquiry are already there in the Act and the Rules, but instead of conducting inquiry or sometimes when even inquiry is not possible then atleast the Government is entitled to consider all those aspects which could be matter of inquiry and can refuse

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the renewal without resorting to detailed inquiry and wasting the time. But, to my mind, this was never the intention of the Legislature while amending the Act to create a bar that particular category of lawyers will not be entitled to renew their certificates after such a short tenure. The impugned executive order issued by the State of Chhattisgarh, in the light of the above decisions, to my mind; amounts to fetter on the discretion of the Government. Looking to the background of the Act and scheme of the Act, 10 years' period cannot be termed consistent with the Act and the scheme. It is mentioned in the impugned order and was also argued that the same has been issued just to give chance to more and more Advocates. But, this is not the purpose with which the Act was enacted. If we look into Section 8 of the Act, which describes the functions of Notary Public, it shows that with the post of Notary Public, the element of public interest is attached; in other words, it is not a job-oriented post. The order impugned has no relevance with the objects of the Act and it amounts to adoption of a general rule disabling itself from exercising discretion in individual cases, and the same is based on considerations extraneous to those contemplated in the amending act. The order impugned is hit by the general rule that while exercising the statutory discretion the authority must not shut (his) ears to the application. Even if it is a policy decision, but the same is arbitrary and capricious debarring all the legal practitioners of particular category from getting their certificate renewed merely on the ground of completion of ten years tenure.

26. As per the principle mentioned in *S.A. de Smith's Judicial Review of Administrative Action*, the authority must not pre-determine the issue as by resolving to refuse "all applications of a certain class". A bare perusal of Rule 3 of the Rules indicates the intention of Legislature that how much importance has been attached to the Office of a Notary Public that one must have a standing of 10 years at the Bar to become eligible which is the eligibility criteria for appointment of a Judge of the High Court. Not only this, as per scheme of the Rules before recommending an Advocate for appointment to the post of Notary Public, views of Bar Council & Bar Association by the authority is mandatory and one is appointed as such after long exercise that too by clearing all barriers. Keeping in mind the nature of duties assigned to Notary Public a great importance/sanctity has been attached with the Office of a Notary Public. Also looking to the historical background of the Office of Notary Public, the impugned executive order dated 31-12-2002 of the State Government laying down that a Notary

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**Public cannot hold Office more than ten years, which is a short period, is not conceivable to the principle of law, and the same is arbitrary and irrational.**

27. As per the above referred decisions, the Government is required to consider each and every case on its merits, and for that purpose the Government can lay down a policy or rules, as to how the certificate of each individual is to be considered and renewed or refused, and accordingly, the Government can devise the guidelines. But the order impugned is definitely predetermining the issue by resolving to refuse all applications or all applications of a certain class.

28. In the result,

a. W.P.No.3247/2003 (Chandra Prakash Sharma vs. State of Chhattisgarh and another) is allowed, and the order dated 31st December, 2002 is quashed. Consequently, the order refusing to renew certificate is also quashed.

b. Consequently, on account of quashment of the impugned order dated 31st December, 2002, which is the basis for refusal of renewal of certificates of the petitioners in W.P.Nos.494/2003, 1894/2003 and 624/2003, the orders refusing their renewal stand quashed and these petitions are also allowed.

c. Perusal of W.P.No.1171/2003 filed by Prashant Kumar Thakur reveals that he was appointed as Notary Public in the year 1993 and his last application for renewal was refused on 26.12.2002. Perusal of W.P.No.510/2003 filed by Madan Lal Gupta reveals that initially he was appointed as Notary Public on 30th May, 1992, and his last term expired on 29-5-2001; in the month of May, 2001, he applied for renewal and his renewal was refused on 23-12-2002. Perusal of W.P.No.1600/2003 filed by Anil Kumar Tiwari reveals that he was appointed as Notary Public on 22-7-1993, and his term was extended up to 21-7-2002, thereafter, he applied for renewal, but his renewal application was rejected vide order dated 26-12-2002 (Annexure P-5). Therefore, the applications of the above three petitioners were rejected even before the policy decision taken by the Government i.e. 31-12-2002, whereas, the stand taken by the State in its return is that their applications were rejected on the basis of the policy decision dated 31st December, 2002. Hence,

automatically, the order refusing their renewal is per see illegal and more over, the above three petitioners had not completed even ten years' practice as Notary Public. In the circumstances, these petitions (W.P. Nos.1171/2003, 510/2003 & 1600/2003) are also allowed, and the orders refusing renewal of their certificates to practice as Notary Public are quashed.

d. The State Government is directed to consider the case of the petitioners as an individual case on their own merits, and decide the same in accordance with law.

e. In the circumstances, I make no order as to costs.

Sd/-
L.C.BHADOO
Judge